

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

APR 15 1996

In the Matter of)

Amendment of Part 20 and 24 of the)
Commission's Rules -- Broadband PCS)
Competitive Bidding and the Commercial)
Mobile Radio Service Spectrum Cap)

WT Docket No. 96-59

Amendment of the Commission's Cellular)
PCS Cross-Ownership Rule)

GN Docket No. 90-314

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COMMENTS OF DEVON MOBILE COMMUNICATIONS, L.P.

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April 15, 1996

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SUMMARY

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Devon Mobile Communications, L.P. ("Devon") urges the Federal Communications Commission ("FCC" or "Commission") to modify its F Block competitive bidding rules to reflect changes previously made to the C Block rules in the wake of Adarand. Specifically, the Commission should eliminate race- and gender-based preferences from its F Block competitive bidding framework if the FCC is unable to gather sufficient evidence to justify the preferences in the instant proceeding. Although Devon, as a woman-controlled small business, would benefit from gender-based preferences, expeditious licensing outweighs the benefit of having to conduct an arduous and time-consuming rulemaking proceeding that, even if successful in establishing gender-based (or race-based) preferences, may nonetheless result in litigation and deferral of the auction.

In revising the F Block rules, the Commission should eliminate the availability of the designated entity bidding credits and delete the related unjust enrichment provisions from its rules. Experience in the regional narrowband and C Block auctions illustrate that the overall bidding credit package may discourage future participation of designated entities in the competitive bidding process. Moreover, the unjust enrichment provisions unfairly penalize designated entities when no benefit is received from the bidding credits and impede the ability of designated entities to obtain much needed capital to build out their systems.

The Commission should modify the equity options made available to minority- and women-owned entities in the F Block only to the extent necessary to make them available to all small businesses, as in the C Block auction. Eliminating the structural alternatives altogether would have a devastating effect on designated entity participation in the F Block auction. It

would not only deny designated entities access to much-needed capital, by making previously unattributable revenues and assets attributable in determining F Block eligibility, but also would obliterate existing business plans created in reliance on current rules.

The FCC should make the same installment payment plans made available to small businesses in the C Block also available to F Block applicants. To date, there is no evidence indicating that the amounts bid for the 10 MHz PCS licenses will be lower than those bid for 30 MHz licenses in the C Block. Indeed, bidding in the C Block far exceeded prior expectations and rivaled bidding activity in the A and B Block PCS auctions. Moreover, to the extent F Block prices are lower than the C Block bids, identical installment payment plans will permit many of the smaller businesses that dropped out of the C Block auction (based on the high level of bidding) to remain competitive in the F Block auction.

Devon supports the Commission's tentative conclusion to retain the small business definition used for the C Block auction. Applying an identical definition in the F Block auction will reduce the possibility of litigation and avoid disqualifying companies who were eligible to bid in the C Block auction and who established a bidding strategy on the assumption that they would be able to participate in the F Block auction. Consistent with the FCC's support of spectrum aggregation, the Commission also should exclude the value of any C Block license won by a potential F Block applicant from the F Block auction gross revenues and total assets eligibility calculations. The FCC already has recognized that certain types of small business growth should not affect a company's eligibility to hold PCS licenses as a "designated entity." The FCC should consider the acquisition of C Block licenses at auction as a similar, non-disqualifying event.

The Commission should modify other auction rules to enhance the ability of small businesses to participate meaningfully in the provision of PCS. For instance, the installment payment plans presently available to small, minority- or women-owned entities should be extended to all small businesses participating in the D and E Block auctions. In addition, the FCC should modify the designated entity holding period to permit F Block licensees to transfer their licenses within the first three years of the license term to any entity that qualifies as an "entrepreneur." Permitting limited license transfers in their first three years will provide designated entities greater access to the capital needed to acquire PCS licenses and build out efficient PCS systems.

Finally, the Notice raises a number of procedural issues that should be resolved in a manner that is both equitable and efficient. Specifically, the Commission should provide that participants in the D, E and F Block auctions should operate under no less onerous a disclosure requirement than applicants participating in the A, B and C Block auctions. Moreover, D, E and F Block licenses should be auctioned concurrently in simultaneous round auctions. They should be assigned by a single auction, with direct eligibility requirements handled as they were in the regional narrowband PCS auction. Lastly, the FCC should consider methods of accelerating the pace of the F Block auction. For example, the FCC could commence the auction at Stage Two, e.g. bidding at eighty percent of an applicant's eligibility at the outset. With the large number of licenses that will be available for bidding in the D, E and F Block auctions, the Commission should adopt an activity rule that encourages aggressive, sincere and efficient bidding practices.

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COMMENTS OF DEVON MOBILE COMMUNICATIONS, L.P.

Devon Mobile Communications, Inc. ("Devon"), by its attorneys, hereby submits its comments in response to the Notice of Proposed Rulemaking released in the above-referenced dockets on March 20, 1996.^{1/} The recommendations made herein address specific proposals made in the Notice and urge the Federal Communications Commission (the "FCC" or "Commission") to make additional changes in its F Block competitive bidding rules to ensure meaningful participation of small businesses in the remaining PCS auctions.

I. INTRODUCTION.

Devon is a small, woman-controlled company aggressively bidding on PCS licenses in the on-going C Block auction. As of close of business on Friday, April 12, 1996, Devon was the high bidder on ten 30 MHz PCS licenses. Devon's consistent and on-going participation in the

^{1/} See Notice of Proposed Rulemaking, Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap; Amendment of the Commission's Cellular PCS Cross-Ownership Rule, WT Docket No. 96-59, GN Docket No. 90-314 (adopted March 20, 1996, released March 20, 1996) ("Notice").

C Block auction is made possible by the small business incentives included in the Commission's C Block competitive bidding rules. Small business preferences made available in the regional narrowband auction permitted an affiliate of Devon, PageCall, Inc., to acquire three regional narrowband licenses. The success of these companies represents the tangible fruits of the Commission's efforts to encourage diversity within the telecommunications marketplace.

As a new entrant into the wireless industry, Devon continues to seek out new opportunities for growth and expansion. As such, Devon is preparing to bid aggressively for F Block licenses in support of its vision of building a cost-effective, interconnected and full-service broadband network. Success, however, can only come if the FCC makes pro-competitive changes in its F Block rules that result in expeditious assignment of F Block licenses.

II. THE COMMISSION SHOULD ADOPT COMPETITIVE BIDDING RULES FOR THE F BLOCK AUCTION THAT WILL RESULT IN EXPEDITIOUS AND EFFICIENT ASSIGNMENT OF THE REMAINING DESIGNATED ENTITY PCS LICENSES.

A. The FCC Should Eliminate the Gender- and Race-based Preferences From its F Block Auction Rules.

Devon agrees with the FCC's proposal to eliminate race- and gender-based preferences from its F Block competitive bidding framework if the FCC is unable to gather sufficient evidence to justify the preferences in the instant proceeding.^{2/} Since the licensing of the A and B Block licenses, the industry repeatedly has stressed that designated entity participation in PCS will only be successful if set-aside licenses are assigned quickly, minimizing the head-start granted to non-designated entity licensees. At this moment, it appears that C Block licenses will not be granted until this summer at the earliest, approximately a year after the A and B Block

^{2/} See Notice at ¶ 26.

licenses were assigned. In the fast-paced and evolving environment of wireless communications, where market and siting realities favor service providers that are first-to-market, it is critical that designated entities have the benefit of the 10 MHz F Block licenses in the near-term.

For those applicants seeking to provide niche services using the 10 MHz frequencies alone, the ability to achieve their business goals and to secure financing is dependent on the immediate availability of the frequencies for use. Moreover, small business bidders intending to provide sophisticated broadband services on 40 MHz of PCS spectrum require immediate access to the additional 10 MHz frequencies to allow a coordinated build-out of their PCS systems -- an effort anticipated by the FCC and authorized under the Commission's spectrum aggregation rules.^{3/}

Although Devon, as a woman-controlled small business, would benefit from gender-based preferences, expeditious licensing outweighs the benefit of having to conduct an arduous and time-consuming rulemaking proceeding that, even if successful in establishing gender-based (or race-based) preferences, may nonetheless result in litigation and deferral of the auction. Assuming that record evidence submitted in this proceeding is not sufficient to support current F Block rules, the Commission should modify its F Block rules to reflect the C Block competitive bidding framework which effectively encourages women and minority-owned entity participation.

^{3/} See Memorandum Opinion and Order, 9 FCC Rcd 4957, 4981-4986 (1994).

B. The FCC Should Eliminate the Bidding Credits Made Available Under Existing Rules For Women, Minorities and Small Businesses.

In revising the F Block rules, the Commission should eliminate the availability of the designated entity bidding credits and delete the related unjust enrichment provisions from its rules. Experience in the regional narrowband and C Block auctions illustrate that the overall bidding credit package may discourage future participation of designated entities in the competitive bidding process. Moreover, the unjust enrichment provisions unfairly penalize designated entities when no benefit is received from the bidding credits and impede the ability of designated entities to obtain much needed capital to build out their systems.

Although Devon supports the Commission's goal of encouraging long-term designated entity involvement in the PCS marketplace, the broadband PCS bidding credit and unjust enrichment provisions do not accomplish this goal. Page Call's experience in the Regional Narrowband PCS auction, in particular, plainly illustrates the adverse effect of the FCC's "beneficial" bidding credit. While Page Call successfully bid for three out of 30 available regional licenses, the 40 percent bidding credit the Commission offered to minority and women-owned small businesses essentially evaporated during the course of the auction. Because designated entities in the regional narrowband auctions paid a net price roughly equivalent to market, the "benefits" of the bidding credit did not enhance the ability of designated entities to compete in the auctions. Rather, the impact of the availability of bidding credits required designated entities to pay a premium gross price for the PCS licenses they have won. The same result can be expected in the on-going C Block auctions.

Moreover, the Commission's Rules further penalize designated entities by requiring the "recapture" of the bidding credit, even when no "enrichment" has occurred. Having agreed to

pay a premium gross price for the licenses they hold, designated entities are subjected to recapture provisions which specifically penalize licensees who sell their licenses to non-designated entities during years five to ten, even when they actually paid a market net price for their licenses as compared to non-designated entity licensees holding comparable licenses. In effect, the rules require designated entities to compensate the Commission for a benefit that never existed.^{4/}

Designated entities would be better served if no bidding credits were available to skew the F Block auction. Within the entrepreneurs' block, the installment payment plans made available to small businesses provide adequate assurance that small businesses will be successful in obtaining F Block PCS licenses.

^{4/} The impact of this bidding credit recapture is particularly severe for designated entities in financial distress who are prevented from selling their licenses to potential buyers who are simply unwilling to incur the additional cost of repaying a bidding credit that was afforded to the designated entity in the bidding process. Unless potential lenders can be assured that financially distressed designated entities will be permitted to transfer their licenses to non-designated entities, at least as a last resort, they will be unwilling to advance the funds necessary to build out designated entity-owned PCS systems.

III. THE COMMISSION SHOULD MAKE CHANGES TO THE F BLOCK RULES TO REDUCE THE POTENTIAL FOR LITIGATION AND THE LIKELIHOOD OF DELAY IN THE LICENSING PROCESS.

- A. The F Block Rules Should Offer Small Businesses the Same Corporate Options in Structuring Their Participation in the Auction as Afforded in the C Block Auction.

The Notice requests comment on whether the Commission should "simplify or abandon" both control group equity options currently offered to F Block applicants.^{5/} Devon urges the Commission to modify the equity options only to the extent necessary to make them available to all small businesses, as in the C Block auction.^{6/} Eliminating structural alternatives altogether would have a devastating effect on designated entity participation in the F Block auction. It would not only deny designated entities access to much-needed capital, but also would obliterate existing business plans created in reliance on current rules.

In adopting the equity options, the FCC made plain that relaxed attribution rules were necessary to encourage investment in minority and women-owned companies and small businesses. Indeed, the Commission recognized that the 50.1/49.9 equity option would "best achieve Congress' objective of providing effective and long-term economic opportunities for women- and minority-owned firms in broadband PCS."^{7/} Moreover, in eliminating gender and race-based preferences from its C Block rules in July 1995, the FCC expressly recognized that these entities would continue to enjoy enhanced access to capital as "small businesses."

^{5/} See Notice at ¶ 32.

^{6/} In particular, the 50.1/49.9 percent equity option should be made available to all small businesses bidding in the F Block, consistent with the C Block rules.

^{7/} See Fifth Report and Order, 9 FCC Rcd 5532 at 5613 (1994).

Eliminating this equity option for the F Block auction would contradict these findings and directly undermine Congress' goal to ensure diversity among licensees in the provision of PCS.^{8/}

In addition, it will prevent companies that successfully bid in the C Block auction from participating in the F Block auction. Many designated entities established PCS business plans based on an ability to bid in both the C and F Block auctions. Nevertheless, eliminating the equity options completely would make previously unattributable revenues and assets of investors attributable, thereby affecting the eligibility of a large pool of F Block applicants. For example, any proposal to aggregate the revenues and assets of investors with an ownership of 25 percent or more in an F Block PCS applicant^{9/} would prevent many designated entity C Block applicants that adopted the 50.1/49.9 Percent equity option from acquiring F Block PCS licenses. In light of the record before this Commission, such a result would be both arbitrary and unsupported by the comments submitted in this docket.

This result would be particularly indefensible because the FCC has expressly recognized the unique benefits of aggregating 10 MHz licenses with 30 MHz licenses, including the market efficiencies and public benefits that would result.^{10/} Indeed, the FCC established its PCS band plan to encourage licensees to aggregate 10 MHz and 30 MHz frequencies.^{11/} Based on prior

^{8/} See Fifth Report and Order, 9 FCC Rcd at 5584-85; Fifth Memorandum Opinion and Order, 10 FCC Rcd 403, 438-443 (1994); Sixth Report and Order, 11 FCC Rcd 136, 154 (1995).

^{9/} See Notice at ¶ 32.

^{10/} See Memorandum Opinion and Order, 9 FCC Rcd 4957, 4981 ("providing a combination of 30 MHz and 10 licenses MHz provides the benefits of 40 MHz licenses, without restricting the options of firms nor affecting competition."); Notice at ¶ 83.

^{11/} See Memorandum Opinion and Order at 4985 ("Interspersing the 10 MHz blocks between each 30 MHz block facilitates aggregation to 40 MHz by allowing combination of each contiguous 30 MHz and 10 MHz license pair.").

FCC pronouncements, it would be entirely inconsistent to require 30 MHz licensees to restructure to comply with new equity rules. Moreover, it would have the practical effect of penalizing designated entity licensees in aggregating spectrum vis-a-vis non-designated licensees. Non-designated entities that operate under no structural restrictions will be free to aggregate spectrum while a large group of C Block licensees will be prevented from acquiring F Block spectrum to aggregate. Further, it would prevent C Block bidders from acquiring 10 MHz of spectrum in new areas to compliment their 30 MHz license holdings.

B. The Installment Payment Plans Made Available to Small Businesses in the C Block Auction Also Should Be Made Available to Bidders in the F Block Auction.

To date, there is no evidence indicating that the amounts bid for the 10 MHz PCS licenses will be lower than those bid for 30 MHz licenses in the C Block. Indeed, bidding in the C Block far exceeded prior expectations and rivaled bidding activity in the A and B Block PCS auctions. Accordingly, the FCC should make the same installment payment plans made available to small businesses in the C Block also available to F Block applicants.

Particularly in smaller markets, 10 MHz of spectrum is more than adequate to support intended spectrum use and capacity requirements. The Commission has confirmed that 10 MHz of spectrum is suitable for providing services ranging from specialized or "niche" applications to services comparable to those now provided by cellular systems.^{12/} In lower demand areas, therefore, prices bid in the C Block auction will reflect a discounting of the value of spectrum which is in "excess" of the spectrum needed to satisfy the bidders' business plans. It can be

^{12/} See Memorandum Opinion and Order, 9 FCC Rcd at 4981.

expected, therefore, that the prices for "comparable" F Block licenses will approximate the winning bids cast in the C Block auction.

Similarly, in heavy demand areas, the additional 10 MHz will be particularly attractive to existing 30 MHz licensees, who will likely bid up the prices of the remaining licenses to extraordinary levels. Modifying the installment payment plans to be less beneficial to designated entities at this stage in the spectrum assignment process would be premature. The FCC simply cannot assume that the 10 MHz licenses will cost less; indeed, it is very difficult to predict accurately the market pressures and dynamics that will affect bidding practices in the remaining PCS auctions.

Moreover, to the extent F Block prices are lower than the C Block bids, identical installment payment plans will permit many of the smaller businesses that dropped out of the C Block auction (based on the high level of bidding) to remain competitive in the F Block auction. To the surprise of many, the costs of the C Block licenses far exceeded expectations. The inflated bids have caused many potential PCS licensees to drop out of the bidding, leaving only a core group of designated entity bidders as viable contenders for the remaining 30 MHz PCS licenses. Making the C Block installment plans available to F Block licensees will increase the chance of broader dissemination of licenses among PCS applicants.^{13/}

^{13/} Similarly, the FCC should retain the reduced down payment preferences for small businesses. Because it is unlikely that the bids for F Block licenses will be significantly lower than C Block bids, reduced down payments are required to afford small businesses an opportunity to participate aggressively in the provision of PCS.

C. The Definition of "Small" Businesses Should Remain Unchanged.

Devon supports the Commission's tentative conclusion to retain the small business definition used for the C Block auction.^{14/} Applying an identical definition in the F Block auction will reduce the possibility of litigation and avoid disqualifying companies who were eligible to bid in the C Block auction and who established a bidding strategy on the assumption that they would be able to participate in the F Block auction.

Changing the classification of potential bidders at this stage, without record support or a requisite change in circumstances, will disrupt business plans that have been in place for several years and disqualify from the F Block auction entities that have never been given the slightest indication that the FCC would consider such a radical rule change.^{15/} The practical effect of any rule change would be to prohibit small businesses (including minority- and women-owned businesses), successful in raising capital and bidding on PCS spectrum in the past, from continuing their investment in new wireless technologies. Business plans will be cut short and long-term prospects of varied participation in PCS will be undermined as F Block licenses are made available to an even smaller pool of prospective designated entity licensees.

In addition to the devastating effect modifying the small business definition will have on designated entities, the expectations of partnering non-designated entities will be equally

^{14/} See Notice at ¶ 50.

^{15/} Although the FCC suggested that it might tailor auction rules to accommodate the characteristics of specific services, it never indicated that substantive rules, such as eligibility requirements, would be changed mid-stream for the assignment of the same spectrum to be used to provide the same type of service. See e.g., Fifth Report and Order at 5535 ("In the Second Report and Order, we adopted rules which provide the Commission with a menu of options to choose from to promote these objectives with respect to particular spectrum services to be auctioned, such as broadband PCS, in service-specific rules.").

adverse. Companies partnering with designated entities, who entered into agreements and joint ventures with the understanding that their partners would be eligible for F Block licenses, are likely to find the rule change inconsistent with contractual assumptions and choose to limit or minimize their financial commitments to the PCS venture. This result would undermine the Commission's efforts to encourage the participation of designated entities in the auction process and in the provision of PCS. The FCC expressly has recognized the importance of preserving justifiable business expectations in adopting competitive bidding rules for spectrum auctions.^{16/} For all these reasons, the FCC must retain the small business definition in establishing eligibility requirements for bidding on the remaining PCS licenses.

Finally, consistent with the FCC's support of spectrum aggregation, the Commission should exclude the value of any C Block license won by a potential F Block applicant from the F Block auction gross revenues and total assets eligibility calculations. Based on existing C Block valuations (which may rise significantly as the C Block auction proceeds), considering the value of the C Block licenses in the eligibility calculation will prevent small businesses from aggregating PCS spectrum. Once the values of the C Block licenses are considered, many successful C Block designated entities will be ineligible to bid in the F Block auction and will be limited to acquiring 10 MHz licenses in secondary markets.^{17/}

^{16/} See Sixth Report and Order, at 136 and 148-149.

^{17/} This would be particularly difficult because all designated entities operate under a strict holding period and non-designated entities will be unwilling to sell their licenses without recouping their payment price plus any "value" they may have added to the license since it was granted.

The FCC already has recognized that certain types of small business growth should not affect a company's eligibility to hold PCS licenses as a "designated entity." For instance, according to FCC rules, a company will be permitted to grow beyond the small business financial caps through equity investment by non-attributable (e.g. passive) investors, debt financing, revenue from operations, business development or expanded service.^{18/} The FCC should consider the acquisition of C Block licenses at auction as a similar, non-disqualifying event. There is no reason to penalize a designated entity by preventing it from acquiring a 10 MHz PCS license simply because it was successful in bidding on the 30 MHz C Block licenses.

IV. THE COMMISSION SHOULD MODIFY THE F BLOCK RULES TO ENHANCE THE ABILITY OF SMALL BUSINESSES TO PARTICIPATE MEANINGFULLY IN THE PROVISION OF PCS.

A. The Installment Payment Plans Should be Extended to All Small Businesses Participating in the D, E and F Block Auctions.

The Notice requests comment on the Commission's proposal to extend installment payment plans to small businesses bidding on the D and E Block licenses.^{19/} Devon supports this tentative conclusion because opening the D and E Block auctions to small businesses will ensure that the FCC achieves its goal of disseminating licenses among a wide variety of licensees.^{20/} Specifically, it will increase the bidding flexibility of small businesses and result in a greater likelihood of their success in the competitive bidding process for PCS spectrum.

^{18/} See Fifth Report and Order at 5606.

^{19/} See Notice at ¶ 54.

^{20/} See also, Comments of O.N.E., filed January 23, 1995 and Comments of Calcell Inc., filed January 25, 1995 in response to News Release, December 23, 1994.

As recognized by the Commission, extending the small business provisions of the F Block to bidders for D and E Block licenses will increase the chances for all small businesses, including those that are women- or minority-owned, to win D and E Block PCS licenses. As confirmed by the A and B Block auctions, without preferences, designated entities stand little chance of successfully bidding for PCS licenses against well capitalized and highly motivated non-designated entity bidders. In addition, designated entities will be particularly disadvantaged in the D and E Block auctions as many cellular companies, for the first time, become eligible to compete in a PCS auction.

Making installment payment plans available to small businesses competing for D and E Block licenses will encourage the participation of small businesses seeking stand-alone 10 MHz licenses, as well as entities that wish to aggregate 10 MHz licensees with their current PCS, cellular or SMR licenses. In particular, it will give designated entities the same opportunities to hold a 30 MHz license as enjoyed by their non-designated entity counterparts. Under the PCS rules, non-designated entities were given essentially two opportunities to hold 30 MHz of spectrum as an A or B Block licensee. Designated entities, however, only had one realistic bidding opportunity for 30 MHz of PCS spectrum -- the C Block license. Opening the other blocks as proposed will give designated entities another opportunity to acquire 30 MHz of PCS spectrum by utilizing three 10 MHz bands of spectrum within a single market. It also will offer them additional opportunities to acquire 10 MHz spectrum in neighboring or otherwise complimentary service areas.

B. The FCC Should Amend the Holding Period Applied to F Block Licenses.

The FCC should modify the designated entity holding period rules to permit F Block licensees to transfer their licenses within the first three years of the license term to any entity that qualifies as an "entrepreneur." A number of PCS applicants have already expressed concern regarding the impact of the holding period on the ability of designated entities to access capital in support of their PCS business plans. Indeed, a number of banks have indicated that they are hesitant or unwilling to lend to designated entities without some level of comfort that they will be able to protect their investment should the venture experience financial distress within the first three years of license grant.^{21/} Permitting limited license transfers in their first three years will address this concern and provide designated entities greater access to the capital needed to acquire PCS licenses and build-out efficient PCS systems.

Moreover, in permitting license transfers in years four and five, the Commission already has confirmed that transfers to other designated entities will not undermine the accomplishment of the Congressional directive to encourage the participation of designated entities in the auction process and can lead to market efficiencies and public benefits. As consistently stated by the FCC, PCS licenses should be placed in the hands of licensees that desire them the most. Permitting limited transfers ensures that the spectrum is used efficiently and that the public is being served by companies committed to providing cost-effective, high quality wireless communications service to the public. It also will save valuable Commission resources as parties wishing to exit the PCS business will be able to do so in a manner that preserves the

^{21/} See e.g., Ex parte Letter submitted by First National Bank of Maryland, PP Docket No. 93-253 (filed March 3, 1995); Ex parte Letter submitted by NationsBank and NationsBanc Capital Markets, Inc., PP Docket No. 93-253 (filed November 3, 1994).

FCC's participation goals for designated entities while avoiding the need for the FCC to re-auction PCS spectrum.

V. THE FCC SHOULD ESTABLISH AN EFFICIENT PROCESS FOR CONDUCTING THE D, E AND F BLOCK AUCTIONS, INCORPORATING LESSONS LEARNED FROM THE A, B AND C BLOCK AUCTIONS.

The Notice raises a number of procedural issues that should be resolved in a manner that is both equitable and efficient. Devon includes herein its recommendations regarding the F Block disclosure requirements, the sequencing of the D, E and F Block auctions and the relevant activity rules to be applied to the remaining PCS auctions.

First, Devon submits that the participants in the D, E and F Block auctions should operate under no less onerous a disclosure requirement than applicants participating in the A, B and C Block auctions. Relief from burdensome filing requirements granted in the C Block auction should likewise be afforded to D, E and F Block applicants. For example, applicants should not be required to identify all businesses in which an attributable investor has a greater than five percent interest if the business is not related to the services for which licenses are being auctioned. Similarly, the FCC should not require the submission of partnership agreements that contain strategic bidding information and/or other confidential data. To the extent that earlier auction participants already have had to disclose certain information, however, new auction participants should not have any competitive advantage that might be afforded by less restrictive disclosure requirements. For example, the FCC has not yet made plain that sensitive partnership agreements need not be filed with the C Block licensee long-form applications. To the extent

this information is required for C Block tentative selectees. it should be required of all prospective PCS licensees.^{22/}

Second, D, E and F Block licenses should be auctioned concurrently in simultaneous round auctions. They should be assigned by a single auction, with direct eligibility requirements handled as they were in the regional narrowband PCS auction. Adopting this auction schedule will permit small businesses maximum bidding flexibility. A single auction also will be relatively simple to administer, particularly with the elimination of the bidding credit. Moreover, by auctioning the D, E and F licenses together, the FCC will avoid the delay experienced in the licensing of C Block frequencies.

Third, the FCC should consider methods of accelerating the pace of the F Block auction. For example, the FCC could commence the auction at Stage Two, e.g. bidding at eighty percent of an applicant's eligibility at the outset. The length of the C Block auction has extended well beyond the time it took to assign the A and B Block PCS licenses and has resulted in even greater delay in the assignment PCS licenses to designated entities. With the large number of licenses that will be available for bidding in the D, E and F Block auctions, the Commission should adopt an activity rule that encourages aggressive, sincere and efficient bidding practices.

VI. CONCLUSION.

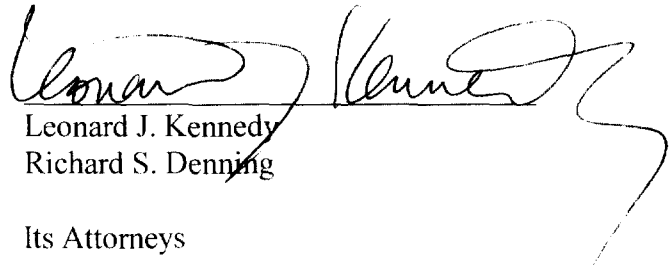
Adoption of the recommendations made herein will ensure active participation by designated entities in the provision of PCS and prompt licensing of the remaining PCS licenses.

^{22/} See generally Notice ¶ 79.

Devon urges near-term Commission action on these issues to preserve existing business arrangements, encourage investment in designated entities and provide the public with competitive alternatives to existing wireless technologies.

Respectfully submitted,

DEVON MOBILE COMMUNICATIONS, L.P.

Two handwritten signatures are present. The first signature, on the left, is written over the name 'Leonard J. Kennedy'. The second signature, on the right, is written over the name 'Richard S. Denning'. Both signatures are in cursive and appear to be in ink.

Leonard J. Kennedy
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April 15, 1996

CERTIFICATE OF SERVICE

I, V. Lynne Lyttle, a secretary at the law firm of Dow, Lohnes & Albertson, do hereby certify that on this 15th day of April, 1996, I caused copies of the foregoing "Comments of Devon Mobile Communications, L.P." to be served via hand delivery to the following:

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